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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0478-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASSHON BENNETT, a/k/a RUSSHON
BEDNNETT, RUSHOON BENNETT,
RUSSHON LEWIS and CAPRI BENNETT,

Defendant-Appellant.

Submitted December 13, 2016 – Decided January 31, 2017

Before Judges Reisner and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
12-08-2021.

Joseph E. Krakora, Public Defender, attorney
for appellant (Elizabeth C. Jarit, Assistant
Deputy Public Defender, of counsel and on the
brief).

James P. McClain, Atlantic County Prosecutor,
attorney for respondent (John J. Lafferty, IV,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant Rasshon Bennett appeals from his conviction for
second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-

5(b), and from the sentence of eight years in prison with four years of parole ineligibility, pursuant to the Graves Act, N.J.S.A. 2C:43-6(c).

On this appeal, defendant presents the following points of argument for our consideration:

- I. THE COURT ERRED IN DENYING THE DEFENDANT'S MOTION REQUESTING A FRANKS HEARING AND MOTION TO SUPPRESS THE WEAPON FOLLOWING SUPPRESSION OF THE DEFENDANT'S STATEMENT.
- II. THE COURT ERRED IN DENYING DEFENDANT'S MOTION FOR AN IN CAMERA INSPECTION OF THE OFFICER'S PERSONNEL FILE.
- III. RESENTENCING IS REQUIRED BECAUSE THE COURT IMPROPERLY FOUND AGGRAVATING FACTORS THREE AND NINE AND IMPOSED A MANIFESTLY EXCESSIVE SENTENCE.

After reviewing the record in light of the applicable legal standards, we find no merit in those arguments and we affirm.

I

We begin with defendant's argument that he was entitled to a Franks¹ hearing to challenge the validity of a warrant the police obtained to search his car. In brief summary, Atlantic City Police Officer Abrams applied for and obtained a search warrant based on an affidavit setting forth the following information.

¹ Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

While on patrol in his police vehicle at about "20:52 hours" Abrams saw a black male, later identified as defendant, standing at the rear of a black car parked on South Carolina Avenue. Abrams saw the man reach into his waist band, remove what appeared to be a handgun, and place the weapon into the open trunk of the car. Abrams and his partner drove past the black car, watching it through their rear view mirror, and followed the car after the driver pulled away from the curb. The officers followed the car for a couple of blocks, and then pulled the car over after the driver ran a stop sign. They ordered defendant out of the vehicle, told him that they believed they had seen him place a handgun in the trunk, and asked him for consent to search the car. Defendant told the officers there was "a 9mm in there" but refused to sign a consent form.

In applying for a Franks hearing, defendant submitted his own certification, attesting that he "was never parked and outside the vehicle at anytime (sic) while I was in the area of South Carolina Avenue." Defendant stated that "[t]he officer came up to the side of my car and requested my [d]rivers [l]icense." When defendant asked why he was being stopped, the officer told him that due to "drug activity in the area," the police routinely stopped and searched "any out of state vehicle seen in that area." Defendant attested that the officer then ordered him to get out of the car,

placed him under arrest, and "proceeded to search the inside of the car" as well as the trunk. Defendant asserted that the officer found "the gun and ammunition" in the trunk in a shoe box in the trunk, but "closed the shoe box and called [for] a tow truck." Defendant's certification also noted a minor discrepancy in the times stated in Abrams' affidavit and his police report.

After considering the sworn statements of Abrams and defendant, Judge Max Baker denied defendant's application for a Franks hearing. In his oral opinion issued April 25, 2013, he stated: "I do not find by a preponderance of the evidence that there has been a substantial preliminary showing that a false statement knowingly and intentionally or with reckless disregard of the truth was made by Officer Abrams."

The judge reasoned that Abrams did not act irrationally in following defendant's car for a few blocks and conducting a traffic stop, rather than immediately confronting defendant on South Carolina Avenue and thus alerting him that the officers knew he had a gun. The fact that Abrams could have employed a different strategy did not undermine the credibility of his affidavit. The judge also did not find that defendant's certification established by a preponderance of the evidence that Abrams' affidavit was untruthful.

We review Judge Baker's decision for abuse of discretion. State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009), aff'd, 201 N.J. 229, 237 n.4 (2010). We find none. To obtain an evidentiary hearing, a defendant must make "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and [that] the allegedly false statement is necessary to the finding of probable cause[.]" Franks, supra, 438 U.S. at 155-56, 98 S. Ct. at 2676, 57 L. Ed. 2d at 672; accord State v. Howery, 80 N.J. 563, 566-68, cert. denied, 444 U.S. 994, 100 S. Ct. 527, 62 L. Ed. 2d 424 (1979). "[A] Franks hearing is not directed at picking apart minor technical problems with a warrant application; it is aimed at warrants obtained through intentional wrongdoing by law enforcement agents." Broom-Smith, supra, 406 N.J. Super. at 240.

We agree with Judge Baker that defendant's certification was insufficient to justify an evidentiary hearing. Defendant presented no evidence beyond his own self-serving statements. And his assertion that, before finding a gun, Abrams arrested him for no apparent reason, was implausible. We find no basis to second-guess Judge Baker's decision. Broom-Smith, supra, 406 N.J. Super. at 239.

In addition, we note that on July 11, 2013, defense counsel actually had the opportunity to cross-examine Abrams on the issues relevant to the search warrant. On that date, Judge Baker conducted a Miranda² hearing at which Officer Abrams gave detailed testimony explaining how he observed defendant put the gun in the trunk and why he was unable to immediately arrest him. The judge suppressed defendant's statement about the gun being in the car, because Abrams did not give defendant Miranda warnings before the statement was made. Defense counsel then re-raised his challenge to the search warrant. Judge Baker stated that he was "satisfied Officer Abrams clearly saw Mr. Bennett put the handgun in the trunk" and reaffirmed that "the basis for the search warrant was valid."

On October 8, 2013, defendant briefly raised the Franks issue a third time, before a second judge (the trial judge), to whom the case had been transferred. Defendant claimed that the absence of fingerprints on the gun somehow justified reconsideration. The trial judge declined to reconsider Judge Baker's decision. We find no abuse of discretion in that determination. See State v. Lawrence, 445 N.J. Super. 270, 274 (App. Div. 2016).

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

II

Defendant next argues that the trial judge erred in denying his motion for an in camera review of Officer Abrams' personnel file. Defendant argued that there were questions about Abrams' veracity, because he did not immediately notify dispatch that he had seen defendant with a gun and he did not immediately arrest defendant after seeing the gun. The prosecutor argued that the defense had not given the court any basis to believe that Abrams' personnel file would contain anything relevant, and the motion was simply a fishing expedition. In denying the motion, the trial judge reasoned that, even if Abrams' personnel file revealed that he had lied about something in a prior investigation, the information would not be admissible in this case. He also reasoned that the fact that defendant had raised some issues about Abrams' credibility did not warrant an examination of Abrams' personnel file.

On this appeal, the State concedes that, if Abrams had made prior false accusations against suspects, those may have been admissible under N.J.R.E. 608(b). See State v. Guenther, 181 N.J. 129, 160 (2004). However, the State argues that defendant provided no basis to believe that Abrams had committed any such misconduct. We agree.

"[T]he right of confrontation requires disclosure where a defendant advances some factual predicate making it reasonably likely that information in the file could affect the officer's credibility." State v. Harris, 316 N.J. Super. 384, 387 (App. Div. 1998). Defendant's presentation did not come close to meeting that standard. Defendant was not entitled to conduct a fishing expedition through Abrams' personnel file in search of negative information about the officer. See Broom-Smith, supra, 406 N.J. Super. at 239 (observing that defendants "are not entitled to turn the discovery process into a fishing expedition"). Defendant's arguments on this point are without sufficient merit to warrant further discussion. R. 2:11-3(e)(2).


III

Finally, defendant argues that the sentence was excessive. Our review of the judge's sentencing decision is limited and deferential, so long as the judge appropriately identifies the aggravating and mitigating factors and properly balances them. State v. Case, 220 N.J. 49, 65 (2014); State v. Bolvito, 217 N.J. 221, 228 (2014). Defendant's arguments do not warrant discussion beyond the following comments. R. 2:11-3(e)(2). Defendant had three prior juvenile adjudications, including one for carrying a handgun, as well as two adult municipal convictions for simple

assault and narcotics.³ We find no abuse of discretion in the judge's finding that defendant posed a risk of re-offending. We also find no error in the judge considering the need to deter defendant and others from illegally possessing firearms. The sentence, which is in the middle of the second-degree range, N.J.S.A. 2C:43-6(a)(2), is not excessive or shocking to the conscience. State v. Roth, 95 N.J. 334, 364-65 (1984).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

³ The convictions were from Pennsylvania, where defendant resided.